



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

DIW 01-00

Paper No. 12

COPY MAILED

MAY 09 2000

JON CAMERON
3506 OVERBROOK DRIVE
DALLAS, TX 75205

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Cameron et al. :
Application No. 08/986,287 :
Filed: 6 December, 1997 :
Title: THERMOCHROMIC BAR CODE :
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed on 3 December, 1999, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant application became abandoned on 24 April, 1999, for failure to file a timely reply to the non-final Office action mailed on 23 January, 1999, which set a three (3)-month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 13 October, 1999.

The instant petition is not a proper petition because it has been signed by only one of the two joint inventors.² However, since the cover letter "Transmittal Letter" references the instant petition, the petition will be considered to be ratified by the signature on the cover letter. There is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. If the new power of attorney and/or change of address is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b). A courtesy copy of this decision will be mailed to petitioner. All future correspondence, however, will be mailed solely to the correspondence address of record.

The petition lacks a proper reply as required by 37 CFR 1.137(b)(1). It is unclear from the document submitted with the petition a "Continuation Patent Application Transmittal Letter," whether petitioner intends to file a Continued Prosecution Application (CPA) or a continuing application under 37 CFR 1.53(b). Petitioner must specify in a renewed petition what type of filing is requested.³ Any renewed petition must clearly indicate the type of filing requested. A copy of the PTO CPA Request Transmittal Form is enclosed for petitioners convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks
 Box DAC
 Washington, D.C. 20231

By FAX: (703)308-6916
 Attn: Office of Petitions

²37 CFR 1.33(b)(5). See MPEP 403.

³In a telephone interview on 10 April, 2000, petitioner's counsel, Michael A. Makuch, informed Petitions Attorney Douglas I. Wood on 10 April, 2000, that petitioner intended to file a CPA, and that a completed CPA Request Transmittal would be sent. As of the mailing date of this decision, however, no CPA Request Transmittal has been received.

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703)308-6918.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

Attachment: PTO/SB/29

cc: Michael A. Makuch
Smith, Gambrell & Russell, LLP
1850 M Street, N.W., Suite 800
Washington, DC 20036